

1 forward is a matter we've placed at issue. But what we're
2 asking, I think, at this point is before the Bureau goes
3 forward with discovery, that it be required to specify what
4 the facts are that constitute the allegation.

5 JUDGE SIPPEL: Well, what you're doing is, as I see
6 that, is what you're doing is really asking them to redraft
7 the Commission's Notice of Proceeding here. I -- and I've
8 indicated -- I'm trying to be responsive to what you say, but
9 I don't see how I can give you the relief that you're asking
10 at this stage.

11 I think that you could tell from the questions that
12 I have and the concern that I have that I see that there are
13 statements in the Show Cause Order such as -- I quoted one in
14 paragraph three, "Information Available." Well, you know,
15 that's the information that I'm sure you're going to see some
16 day, but you want to find out about it up front so that you
17 can get some discovery in.

18 There is a procedure -- well, I'm hesitating
19 because, as I say, I'm listening very carefully to what Mr.
20 Schonman says, and I accept what he's representing. He --
21 basically he says he needs the time to get his discovery under
22 way, and the last thing that he needs is to have to be dealing
23 with discovery requests at the same time. Now, I know that's
24 now how the real world works, but this is not a civil action.
25 This is an enforcement action before the F.C.C., and I have a

1 This is an enforcement action before the F.C.C., and I have a
2 lot of discretion in terms of how to regulate this proceeding.
3 I just want you to -- nobody's going to go to court without
4 knowing what the other side has. That's for sure. But I --
5 there is a provision -- and I say that in purpose to this.
6 There is a provision in the Rules for asking Interrogatory
7 questions of the Bureau, and I am very, very reluctant -- I
8 very -- I don't know if I've ever authorized that procedure
9 before, but it is there. It's in the Rules. And I'm not
10 going to authorize it today. I want to give the parties a
11 chance to sit down and talk some more about this.

12 MR. SCHONMAN: Your Honor, may I --

13 JUDGE SIPPEL: Yeah. Yes, sir.

14 MR. SCHONMAN: -- offer you a response as well? It
15 is my understanding that Mr. Kay has served upon the Wireless
16 Communications Bureau a number of FOIA requests, so there
17 should be no -- so that there may be no misunderstanding here,
18 Mr. Kay is not operating in a vacuum. He has had, as I
19 understand it, a number of documents provided -- please
20 correct me if I'm wrong, Counsel, but there have been a number
21 of foyer requests. So --

22 MR. SCHWANINGER: We admit that there's been a
23 number of FOIA requests, but none of which would have
24 articulated the exact instances that are supposedly alleged
25 within the Order to Show Cause.

1 that.

2 JUDGE SIPPEL: Isn't there some kind of an Exception
3 Seven or something about investigatory materials or something?

4 MR. SCHWANINGER: It was raised and used.

5 MR. SCHONMAN: Your Honor, to the --

6 JUDGE SIPPEL: I would hope so.

7 MR. SCHONMAN: -- to the extent that Mr. Kay takes
8 exception to the Hearing Designation Order. There is a
9 procedure for seeking reconsideration of fact.

10 And in addition, I would also note that they have
11 filed a Motion to Enlarge, Change or Delete Issues. That was
12 served on Counsel on January 25, 1995.

13 JUDGE SIPPEL: That's history. That's gone.

14 MR. SCHONMAN: And I believe in that they requested
15 the same type of relief they're requesting here, so --

16 JUDGE SIPPEL: It's -- forget about that. That's
17 gone. I've taken care of that for you. But I'm still left
18 with my quandary and that is, I've got to let them get ready
19 for this hearing, and I want to get the hearing date moved
20 along, and they have to get -- they have to have information
21 to prepare their case with.

22 MR. SCHONMAN: Your Honor, let me assure you, as
23 officers of the Court, our discovery is going to seek evidence
24 relevant to the issues. The suggestion that we're going to
25 seek boundless information is simply not true. I mean,

1 | certainly we are bound to the issues in this case, and our
2 | discovery will be confined to that.

3 | JUDGE SIPPEL: Well, that's --

4 | MR. SCHONMAN: Anyway, we're certainly --

5 | JUDGE SIPPEL: -- they're not going to -- it could
6 | conceivably happen that they're not going to see it that way
7 | and we're going to be back in here for another conference on
8 | scopes of discovery and stuff like that, which is fine. I
9 | mean, that's -- I don't have an objection to that. It's the
10 | way these processes work. But I'm trying to nip in the bud as
11 | much as I can up front. That's all I'm trying to accomplish
12 | today.

13 | MR. SCHONMAN: Understood, Your Honor. What we're
14 | prepared to do today is to offer dates. We would like to
15 | commence discovery. There can be a date for closing
16 | discovery, exchange of exhibits, witness notification and
17 | hearing date. And then we can go back to our offices and go
18 | about our business trying to move this case along. We have
19 | every intention of doing that.

20 | JUDGE SIPPEL: What about the Bureau -- well, we'll
21 | just have to -- I'll just have to take it one stage at a time.
22 | I was going to require you to give me next week a discovery
23 | schedule, but if you've got some dates in mind with respect to
24 | all of these other things, then fine. You're talking about
25 | commencing discovery on what date? You've got some specifics

1 in mind?

2 MR. SCHONMAN: February 17th would be the outside
3 date for serving upon opposing Counsel our various requests
4 for information.

5 JUDGE SIPPEL: All right, what other date do you
6 have in mind? What's the next date?

7 MR. SCHONMAN: What other dates would you like?

8 JUDGE SIPPEL: Well, you just ticked off -- I
9 thought maybe you had these -- anticipated that you were
10 starting discovery, ending discovery --

11 MR. SCHONMAN: Well --

12 JUDGE SIPPEL: -- exchanging exhibits. Do you have
13 these in mind?

14 MR. SCHONMAN: -- what I anticipate is that we --
15 coming into this conference is that we would discuss the
16 various dates.

17 JUDGE SIPPEL: All right.

18 MR. SCHONMAN: I've informed Your Honor that I
19 believe we are fully capable, at least it seems at this point,
20 of commencing our discovery by February 17th. That I think we
21 can represent to you that we will by that date serve on
22 Counsel all the discovery vehicles that we've mentioned.

23 JUDGE SIPPEL: Now, this -- and this is going to be
24 a one-shot -- I mean, in the sense that you're going to have
25 them all in the same day, there's going to be the Request for

1 Admissions, Interrogatories and all within one or two days of
2 each other?

3 MR. SCHONMAN: Well, as I just stated, that's just
4 the outside dates. Certainly, if we're able to do it earlier
5 and we can get out of them out earlier before another, we will
6 try to do that. We want to move this case along.

7 JUDGE SIPPEL: All right, I hear you. So, okay, so
8 you start discovery on the 17th, and then have you factored in
9 what they're authorized in terms of time to come back?

10 MR. SCHONMAN: No, the --

11 JUDGE SIPPEL: I mean, are you looking for a shorter
12 period of time or what --

13 MR. SCHONMAN: Well, I want to afford opposing
14 Counsel every opportunity that the Rules provide for
15 responding. Certainly I'm not suggesting any shortened period
16 of time unless they feel that they would be able to respond in
17 a shorter period of time that the Rules provide them. I'm not
18 suggesting that.

19 MR. SCHWANINGER: We're not suggesting that either
20 because it's kind of difficult given everything we've said up
21 until now to even be able to anticipate what our discovery
22 needs are going to be because a lot of it's going to be in
23 response to exactly what we've said.

24 JUDGE SIPPEL: All right.

25 MR. SCHONMAN: I would agree with Counsel. Until

1 | they see what we're going to do, I don't see how they could
2 | possibly represent how much time they would need to respond.
3 | Whether it's a shorter period of time or even a longer period
4 | of time than the Rules provide.

5 | MR. SCHWANINGER: It could very well be, depending.

6 | JUDGE SIPPEL: All right. Well then, assuming
7 | everybody gets the time they're entitled to and I don't
8 | shorten the time, the responsive times, what -- where --
9 | you're going to go from there then into depositions?

10 | MR. SCHONMAN: Yes, based on the --

11 | JUDGE SIPPEL: So --

12 | MR. SCHONMAN: -- information we received, that
13 | would give us a better handle, so to speak, on the persons who
14 | we need to depose.

15 | JUDGE SIPPEL: All right. So you're not going to be
16 | deposing people then until at the best middle to end of March?

17 | MR. SCHONMAN: Well, let me just say this --

18 | JUDGE SIPPEL: I mean, unless there's some others
19 | that you know about in the meantime. But I mean --

20 | MR. SCHONMAN: Could I just --

21 | JUDGE SIPPEL: Go ahead.

22 | MR. SCHONMAN: Before Your Honor entered the
23 | courtroom this morning, we were discussing depositions and
24 | where they might be, and please correct me if I'm wrong, we
25 | would like to depose all the people who may be in the Los

1 Angeles area at the same time. It seems a little silly to go
2 out several -- make several different trips.

3 MR. SCHWANINGER: We're looking to be efficient for
4 everyone who's here in Washington, D.C. for shuttling back and
5 forth to L.A.

6 JUDGE SIPPEL: All right. I'm very appreciative of
7 hearing that.

8 MR. SCHONMAN: Even if we could depose Mr. Kay
9 earlier, we would like at the very least to be able to review
10 the documents and the information that's provided as a result
11 of the Interrogatories and the document requests. That way we
12 can ask Mr. Kay intelligent questions. We don't want to have
13 to depose him twice. So it seems reasonable to put off the
14 depositions, at least until after we've had responses to all
15 the other discovery tools. Then we can schedule all the
16 witnesses, however -- whatever number that might be.

17 JUDGE SIPPEL: My question all assumes all that.
18 But I'm saying, what kind of a -- roughly, how long do you
19 think your deposition schedule is going to take --

20 MR. SCHONMAN: Well --

21 JUDGE SIPPEL: -- assuming that you get the
22 information in thirty days?

23 MR. SCHONMAN: Yeah. I would anticipate perhaps by
24 the end of April we could conclude discovery. Would that --
25 perhaps Your Honor can ask Mr. Brown.

1 JUDGE SIPPEL: Well, it will conclude the Bureau's
2 discovery. All right, let's say that that's the target date.

3 MR. SCHONMAN: In other words, you're suggesting
4 there will be different dates for conclusion of discovery?

5 JUDGE SIPPEL: No, I'm not suggesting anything. I'm
6 just -- all I can react to is the discovery schedule -- is the
7 status reports that I received. And the status reports, I
8 received them, very, very broad and very general.

9 MR. SCHONMAN: Uh-hum.

10 JUDGE SIPPEL: I had a whole list of things in my
11 Order that I was asking the Counsel to do before coming in
12 here, and I didn't see too much of that except in a very
13 general way. So I got to -- I'm trying to pin this down. If
14 you complete it by April 30th, then you would be able to start
15 preparing -- you'd have your witnesses, you'd be able to start
16 preparing for your witness list and putting together your
17 documentary evidence.

18 MR. SCHONMAN: Yes, we would be in a position after
19 the depositions to review all the information we have before
20 us, testimonial evidence, and documentary evidence, and I
21 would say three weeks after that to be able to exchange
22 exhibits. And I would strongly urge Your Honor to set a date
23 for exchange, one date for exchange, where both sides exchange
24 on the same date.

25 JUDGE SIPPEL: Well, I'm not going to do that, and I

1 | told you why. And again, if you -- if I were to give you that
2 | relief, then I wouldn't be able to protect you as well as I
3 | think I can from having to respond to a lot of discovery
4 | requests while you're doing all this work. I mean, it's --
5 | believe me, you've got a lot of work to do there. And I -- as
6 | I said, they are entitled to more information than they have
7 | right now. So -- and it's a question of when do they get it
8 | and how do they get it. Now, that would then bring it
9 | sometime around -- sometime before Memorial Day. Let's just
10 | arbitrarily set May 26th would be the Bureau's exchange date.
11 | And then under my schedule, under my procedures, it would be
12 | something in the area of ten days later -- well, say in the
13 | area of let's say June 16th, which is a Friday, that you would
14 | get the -- would be the exchange of -- Mr. Kay's exchange
15 | date.

16 | MR. SCHONMAN: I'm sorry, what was that date, Your
17 | Honor?

18 | JUDGE SIPPEL: June 16th. Right now these are
19 | working dates. I'm trying to get a focus on -- I want to see
20 | the whole picture at one time and then we can continue to talk
21 | about this.

22 | Now, if we do that, then we have an admissions date
23 | of something like June 23, and then we could start -- let's
24 | see, the 4th of July coming up in there.

25 | MR. SCHONMAN: Your Honor, may I inquire about the

1 admissions date, what you would anticipate what activities
2 would be carried out at that admissions session?

3 JUDGE SIPPEL: Well, I was hoping that you would
4 tell me what you had in mind, but I'll tell you what I have in
5 mind.

6 MR. SCHONMAN: Okay.

7 JUDGE SIPPEL: The documentary evidence would be
8 marked, identified and received. If there are witnesses that
9 are going to testify with a pre-written testimony, that could
10 be marked, identified and received in evidence, it would be
11 available to cross-examination. Work out whose -- ground
12 rules -- stipulations at that time, or statements -- let me
13 say it this way. If there's going to be objections to cross-
14 examination of any of the witnesses, that could be done at
15 that time. I could rule on those objections to be sure that -
16 - in other words, to be sure who the witnesses are that are
17 going to be required to be at the hearing to testify. There
18 may be some that I would say that I don't -- you know, they're
19 not relevant to subpoena. We'll have to get out the hearing
20 subpoenas.

21 MR. SCHONMAN: Your Honor, the Bureau does not
22 anticipate that it will have -- that it will reduce direct
23 testimony to writing.

24 JUDGE SIPPEL: It doesn't surprise me. All right,
25 so --

1 MR. SCHONMAN: So we would be prepared on the
2 exchange date, I think it's been your policy in the past to
3 require at least a brief statement as to the subject matter
4 that the witnesses would be expected to testify about.

5 JUDGE SIPPEL: Right, exactly.

6 MR. SCHONMAN: And we would certainly include that.
7 Of course, that's not something that would be received into
8 the record, but it would more in the nature of notification to
9 Your Honor.

10 JUDGE SIPPEL: Well, that would be note -- I'm more
11 concerned about notification to the other side on that score.
12 But that would be done with the -- that would be done on the
13 exchange date.

14 MR. SCHONMAN: Yes, sir.

15 JUDGE SIPPEL: That would not be done at the -- I
16 wouldn't wait until the admissions session.

17 MR. SCHONMAN: Yes, sir. No, but I just wanted to
18 alert Your Honor that at the admissions session you would not
19 have the benefit of direct written testimony from any
20 witnesses.

21 JUDGE SIPPEL: All right. Well, that's your
22 prerogative. I mean, there might be some technical evidence
23 or something about books and records that you'd want to bring,
24 you know, bring a written statement in to certify that these
25 are records from the Bureau's whatever. I mean, you know, I'm

1 talking about a lot of nuts and bolts things to get done on
2 that date. And also I'd like to get into the question of
3 rebuttal at that time too, whether or not there's going to be
4 any rebuttal evidence because you'll already have had the
5 evidence exchanged, so you should be able to articulate good
6 reasons as to why rebuttal is appropriate and in what areas
7 it's appropriate and just, you know, how you're going to go
8 about doing it. I don't mean to say that you have to identify
9 every witness that you're going to use, but at least I want to
10 make a determination at that point as to whether or not
11 there's going to be rebuttal and then try and schedule that,
12 work the schedule out. So that's going to be a busy day. It
13 may end up being a couple of days. But anyway, we're talking
14 about -- let me back that up a little bit, say, June 22, June
15 23, but that's the time frame that you feel that you can be
16 prepared to go forward on that?

17 MR. SCHONMAN: For the admission?

18 JUDGE SIPPEL: For the admissions, right. So, is
19 that correct? Am I getting ahead of you?

20 MR. SCHONMAN: No, you're not.

21 JUDGE SIPPEL: So rather than run the risk of
22 getting involved in the 4th of July weekend, having that
23 bifurcate what's going on here, I would say July 10, something
24 in that -- is that what you're thinking of? Do you have
25 another date in mind?

1 MR. SCHONMAN: Was there a date for the witness
2 notification?

3 JUDGE SIPPEL: Well, that would be -- as I
4 indicated, when you started -- when you exchange your case,
5 you're going to have the list of witnesses and who the
6 witnesses are going to be --

7 MR. SCHONMAN: That we would be calling. But the --
8 that we would be --

9 JUDGE SIPPEL: You'll have theirs too.

10 MR. SCHONMAN: The witnesses who would be providing
11 direct testimony. I'm talking about witnesses for cross-
12 examination.

13 JUDGE SIPPEL: Well, if you don't have any written
14 statements, you're going to have to call -- the witnesses are
15 going to have to be on your first list. You're going to have
16 to call them as adverse witnesses. You're going to have to
17 know who you're going to want.

18 MR. SCHONMAN: But Mr. Kay may have witnesses who we
19 want to cross-examine.

20 JUDGE SIPPEL: Well, that's -- as I say, the
21 admissions session we can rule on them. But I'm assuming that
22 you're going to know what their witnesses are on or about the
23 16th.

24 MR. SCHONMAN: Yes, sir.

25 JUDGE SIPPEL: So you can decide by the 22nd or 23rd

1 as to whether you want to cross-examine them.

2 MR. SCHONMAN: Very well.

3 JUDGE SIPPEL: But I'm assuming that since we're
4 going without written testimony and that you -- anybody that
5 he puts on the stand you're going to want to cross-examine. I
6 mean, I don't think that really needs to be gone into in
7 great -- I mean, the whole reason for making a decision on
8 cross-examination has to do with written testimony in advance,
9 where if there's no reason to cross-examine, then you don't
10 have to bring the witness in. But the witnesses -- any
11 witness that's going to testify without the benefit of pre-
12 written testimony is going to be sitting right here on the
13 stand, so you can make a decision on the day that he
14 testifies, if she testifies, to whether or not you want to
15 cross-examine him.

16 MR. SCHONMAN: Very well.

17 JUDGE SIPPEL: I don't think we have to spend a lot
18 of time on that one.

19 MR. SCHONMAN: Will Mr. Kay present any written
20 direct testimony?

21 JUDGE SIPPEL: Oh, yeah. I'm only talking to the --
22 I haven't gotten to his side of the table yet. I don't know.
23 I would certainly expecting Mr. Kay to be taking the stand,
24 but I -- you know, I'm not going to put them to the task of
25 telling me that right now. But I would expect that he would

1 up here testifying, sure.

2 MR. SCHONMAN: But there may be other -- the point
3 I'm trying to make, Your Honor, is that Mr. Kay may have other
4 witnesses. I believe he's already represented a number of
5 names of individuals who he would expect to have testify.

6 JUDGE SIPPEL: Right.

7 MR. SCHONMAN: I don't know if those individuals
8 would testify in direct -- on direct in written form or orally
9 on --

10 JUDGE SIPPEL: Well, I haven't gotten to -- as I
11 said, I haven't talked to Mr. Brown yet about that. But
12 again, I'm more concerned about, it's the Bureau -- it's the
13 Bureau's case, it's the Bureau's discovery, it's the Bureau's
14 efforts that's -- that's the intricate ingredient to setting a
15 trial date. I can work -- once I get your situation squared
16 away and I get your dates, I can work around those to bring in
17 Mr. Kay's case because all he has to do is respond to your
18 evidence. You've got the burden of proof and you've got the
19 burden of producing it.

20 MR. SCHONMAN: Understood.

21 JUDGE SIPPEL: Okay. So what do you think in terms
22 of a trial date then?

23 (Pause)

24 MR. SCHONMAN: Based on the dates that you've
25 already provided, perhaps the week of July 17th going out to

1 Los Angeles.

2 JUDGE SIPPEL: All right. Well, let's think in
3 terms of -- let's put that date down for now. Now, you don't
4 know where these evidence -- these witnesses are necessarily
5 going to located? They're going to be in the Los Angeles
6 area?

7 MR. SCHONMAN: Well, I -- obviously I can't say for
8 sure but --

9 JUDGE SIPPEL: No, as far as -- as best you know.

10 MR. SCHONMAN: -- I would suspect that most of them
11 are in the Los Angeles area.

12 JUDGE SIPPEL: Well, okay, all right. And what
13 about any witnesses that would be available on the East Coast?
14 Do you have any of those in mind at this stage?

15 (Pause)

16 MR. SCHONMAN: There may be a possibility of having
17 testimony from witnesses who are located on the East Coast.

18 JUDGE SIPPEL: All right. So we'd have to have a
19 separate session then for East Coast, West Coast. Would Mr.
20 Kay come to Washington to testify?

21 MR. BROWN: You mean would he be willing to or --

22 JUDGE SIPPEL: Yes.

23 MR. BROWN: -- or was it contemplated that he would?

24 JUDGE SIPPEL: Well, would he be willing to?

25 MR. BROWN: Well, I believe he would.

1 MR. BROWN: Well, I believe he would.

2 JUDGE SIPPEL: All right. Because I suspect that
3 that would be some -- I would expect that that would be some
4 pretty extensive testimony, both under direct and cross-
5 examination, and it would -- I think it would be convenient to
6 all concerned if he would come to Washington and we could do
7 that in an East Coast -- whatever the East Coast session date
8 is, which would probably, again, be after the West Coast. I
9 take it that's what you had in mind. I'm not trying to try
10 your case for you, I'm just trying to ask you if this is what
11 you had in mind.

12 MR. SCHONMAN: Certainly it would be helpful if Mr.
13 Kay testified here.

14 JUDGE SIPPEL: No -- yeah, but I'm saying, the East
15 Coast would be after the West Coast or --

16 MR. SCHONMAN: Well, it depends on the order of the
17 witnesses. Mr. Kay could be the first witness, he could be
18 the last witness. We certainly haven't formulated that yet.

19 JUDGE SIPPEL: Yeah, you might call him as the
20 Government's witness, as your first witness, because they
21 don't call until you go. You go first.

22 MR. SCHONMAN: I understand.

23 JUDGE SIPPEL: Okay. Now, what I need to know
24 relatively soon is whether or not you intend -- whether or not
25 you intend to start on the East Coast or the West Coast

1 | courtroom out there. So we do need some -- we have to get
2 | down to some brass tacks pretty soon. And I say tactically
3 | you may have a reason for why you'd want to do it first there
4 | than here or visa-versa. And I'm -- I want to give you a
5 | couple days to let me know, think about that. But you do have
6 | a commitment -- and I take it you -- you don't have to check
7 | with your client about that, that we know today that he will
8 | make himself available here in Washington?

9 | MR. BROWN: Well, I'm reasonably confident he will,
10 | yes.

11 | JUDGE SIPPEL: All right. All right, well, I'm
12 | going to assume that he is unless, you know, unless I hear
13 | from you very shortly. I'm going to assume that he will do
14 | that because it's -- I'm in a position --

15 | MR. BROWN: Well --

16 | JUDGE SIPPEL: -- and I'm sure he knows that, I can
17 | order him to be here.

18 | MR. BROWN: Certainly.

19 | JUDGE SIPPEL: So --

20 | MR. BROWN: Certainly you could, Your Honor. Would
21 | it -- if it would be acceptable, I certainly expect to
22 | communicate with him shortly after this hearing is concluded,
23 | and if there's any difficulty with that, I can let Your Honor
24 | know immediately.

25 | JUDGE SIPPEL: All right. Well, you want to tell

1 him certainly that the only reason there could be a difficulty
2 is if he's -- if he has some kind of a very, very serious
3 commitment in that same time frame.

4 MR. BROWN: Yes.

5 JUDGE SIPPEL: And so, you can tell him that we're
6 talking about his testimony in the middle of July, and
7 whether, you know, again, that -- that's as much as -- that's
8 as much as I -- that I would feel comfortable in setting today
9 based on what Mr. Schonman's telling me.

10 Now, all right. That gives us the scheme of things
11 with respect to the Bureau. What kind of discovery did you
12 have in mind? I mean, I know what your Motions say and all
13 this -- all the issues that you've raised as preliminary
14 matters in the case, but in terms of assuming you're going to
15 get on -- on the -- by the 20 -- well, first of all, you're
16 going to see by the 17th of February, you're going to see some
17 very specific requests for some very specific information, so
18 you'll know -- you're going to know what the Bureau is going
19 after in that respect. And you do know what their -- so far
20 as the allegations go in the Order to Show Cause, you know
21 the -- the area of activity that they're making allegations,
22 in any event.

23 Now, before the hearing how much more information do
24 you knew -- do you -- and well, let me -- let me preface this
25 by saying that I've seen your list of witnesses and I'm

1 | certainly not going to permit the testimony to be taken -- I'm
2 | not going to get into a situation where I'm going to
3 | authorize, or suggest, or in any way, shape or form
4 | participate in you taking the testimony of the Chairman of the
5 | F.C.C. And you've indicated that you want a request, I
6 | believe, Mr. Hollingsworth's testimony --

7 | MR. BROWN: Yes.

8 | JUDGE SIPPEL: -- in deposition testimony. And I
9 | don't -- again, you're going to have to make a hard showing on
10 | that because all you're really interested in -- as far as I'm
11 | concerned, the only thing that you're entitled to is factual
12 | information, factual information which is evidence relevant to
13 | the charges.

14 | MR. BROWN: I understand that.

15 | JUDGE SIPPEL: If you have other concerns, they're
16 | not going to be aired in this proceeding. Now, I guess I
17 | would have to wait and see what it is that you were asking in
18 | terms of justification to be taking his deposition, but I
19 | mean, I -- do you have something you want to tell me now about
20 | that?

21 | MR. BROWN: Well, as Mr. Schonman indicated, we've
22 | been extensively involved in writing to other matters, and
23 | I've not yet had an opportunity to write to this matter. It's
24 | my intention to do so, but I've not yet had the opportunity to
25 | do so.

1 JUDGE SIPPEL: Well, I can alert you up front that,
2 you know, if you want to do things to make a record, that's
3 one thing in terms of where the case goes from here. But I
4 would -- I don't see anything involved in this -- I mean,
5 well, as I say, I don't see any relevancy at all to the
6 testimony of the staff that was involved in the investigation
7 of this case for purposes of this adjudication. I just don't
8 see it.

9 MR. BROWN: Well, the relevancy is to whether the
10 entire matter should be dismissed.

11 JUDGE SIPPEL: Well, I've got a Hearing Designation
12 Order that says the Commission wants this case to go forward.
13 It's going to be very -- I'm not -- I really am not going to
14 have -- I'm not really going to be in a position to address a
15 Dismissal Motion unless it's after the evidence comes in. I
16 mean, if the evidence isn't there, the evidence isn't there.
17 But at this stage of the game, to ask me to dismiss this case
18 is going to be -- I would anticipate it being a futile effort.

19 MR. BROWN: I understand.

20 JUDGE SIPPEL: So you're forewarned on that. But
21 what I'm trying to do obviously is I'm trying to forego the
22 need to have to address issues or address procedural issues,
23 address subpoena requests and notices for deposition that I
24 feel that are just going to be waste of time.

25 MR. BROWN: I understand that.

1 JUDGE SIPPEL: If you want to make a proffer of
2 relevancy or somehow or other, I'd be glad to do that and the
3 record can be made clear that you've asked for this discovery
4 and I've turned you down, but let's try to keep the flow of
5 the papers to a minimum as best we can because there's going
6 to be -- I'm sure there's going to be some fights down the
7 road on some stuff that's going to be what I would consider to
8 be relevant evidence, or at least would be in the ball park of
9 relevant evidence.

10 But again, you -- you don't seem to -- you've
11 indicated a few people, including Mr. Kay. I've seen this --
12 well, Mr. Paul -- Mr. Paul Northrup -- Northup?

13 MR. BROWN: Northup.

14 JUDGE SIPPEL: Northup. Which of these -- I
15 certainly -- but you haven't identified who these people are
16 and how they tie in with the case at all. Could you give me a
17 little bit of indication?

18 MR. BROWN: Yes, sir. I believe I -- I believe I
19 did in the Status Report, but, yes. Mr. Northup, Mr. Kramer,
20 Mr. Sarafinia are all engaged in the radio communications
21 business in the Los Angeles area.

22 JUDGE SIPPEL: And are they associates of Mr. Kay?

23 MR. BROWN: No, they're not. They are in a position
24 to testify as to his character, his reputation in his business
25 practices in radio communications in Los Angeles.

1 JUDGE SIPPEL: All right. So these would be in the
2 nature of friendly witnesses?

3 MR. BROWN: Yes.

4 JUDGE SIPPEL: All right. And you've mentioned this
5 name, Mr. Mark Sobel. That seems to come up in several
6 contexts.

7 MR. BROWN: Yes.

8 JUDGE SIPPEL: Can you tell me a little bit about
9 Mr. Mark Sobel?

10 MR. BROWN: Mr. Sobel was present at the time that
11 the station referred to in the issue designated in paragraph
12 10(b) of the Hearing Designation Order was inspected.

13 JUDGE SIPPEL: What's his position? Is he an
14 employee or --

15 MR. BROWN: No, he's not.

16 JUDGE SIPPEL: What is his -- what is -- what is
17 his --

18 MR. BROWN: He's an independent contractor who does
19 maintenance work for Mr. Kay.

20 MR. SCHWANINGER: He's also in the radio-
21 telecommunications business.

22 MR. BROWN: Yes. He's also in his own radio-
23 telecommunications business under his own name, and doing
24 business name as in the Los Angeles area.

25 JUDGE SIPPEL: All right. Now, how would you

1 anticipate going about your discovery?

2 MR. BROWN: Well, by -- and I'm not trying to be
3 overly general, but by all the means permitted by the
4 Commission's rules.

5 JUDGE SIPPEL: Yeah.

6 MR. BROWN: Initially we would anticipate as
7 promptly as we can do it submitting some Interrogatories to
8 try to get to what some of the facts of the matter are.

9 JUDGE SIPPEL: All right, I'm going to -- what I'm
10 going to do is I'm going to authorize you to put together a
11 set of Interrogatories. I'm going to limit you to ten
12 Interrogatories to each paragraph of the Hearing Designation
13 Order.

14 MR. BROWN: Ten Interrogatories to each paragraph?

15 JUDGE SIPPEL: Each paragraph.

16 MR. BROWN: All right.

17 JUDGE SIPPEL: No more than ten.

18 MR. BROWN: Oh, each -- each paragraph of the
19 Hearing Designation Order? Is that --

20 JUDGE SIPPEL: Correct. Which is -- I mean, only
21 the -- I don't want to take the time now to go down and
22 designate which ones, but I'm only talking about the ones that
23 are factual.

24 MR. BROWN: Yes.

25 JUDGE SIPPEL: The ones where there is factual